

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: DERMAHOSE INC.  
MARK: EPIL HOSE  
SERIAL NO.: 76/585,901  
FILED: April 9, 2004  
EXAMINER Cynthia Sloan, Examining Attorney, Law Office 116

NOTICE OF APPEAL  
AND  
APPEAL BRIEF

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Sir:

NOTICE OF APPEAL

Applicant appeals the final Refusal of November 7, 2005 and hereafter submits a duplicate copy of this sheet to facilitate making the charge of the appeal fee of \$100 to Deposit Account 01-1174.

APPEAL BRIEF

Issue on Appeal

At issue is whether a declaration of record signed by Myron Amer, as authorized agent of applicant, namely Dermahose, Inc. by its President Paul Zaidman, serves the legal purposes intended, or must it be signed by Paul Zaidman, per se.



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Commissioner for Trademarks  
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## **Arguments**

### **A. Of Examining Attorney**

The examining attorney cites (1) Federal Rule of Evidence 801(b), (2) Trademark...[[Rule] 2.20, and (3) Trademark...[Rule] 2.33, as a basis for refusing the Declaration signed by MYRON AMER, as attorney, on behalf of the applicant, "Paul Zaidman."

Federal Rule of Evidence 801(b) and Trademark...[Rule] 2.20 do not provide substantive support for the examining attorney's position.

Trademark...[Rule] 2.33 is on point in that it goes to the issue raised. However, it does not support the examining attorney's position, but holds otherwise in providing that a declaration is properly signed by "(3) An attorney...who has an...implied written...power of attorney from the applicant."

### **B. Of Applicant**

For purposes of certifying the issue for purposes of appeal, is it the examining attorney's position that "PAUL ZAIDMAN...has authorized MYRON AMER, as attorney to execute this declaration on his behalf" is not "an implied written...power of attorney from the applicant" within the scope of Trademark...[Rule] 2.33(3)?

Alternatively, is it the examining attorney's position that Paul Zaidman's executed POWER OF ATTORNEY of the third paragraph of page 1 of the above-captioned application to recognize Myron Amer "to prosecute this application [and] to transact all business in connection therewith" is not an authorization to sign the declaration in issue within the scope of Trademark...[Rule] 2.33(3)?

Neither of these inquiries can be answered in the affirmative.

**Conclusion**

The declaration of record accordingly should be deemed to have the legal purposes intended.

Respectfully,

MYRON AMER, P.C.  
Attorney for Applicant

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Myron Amer

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